

MEMORANDUM

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State of Alaska

TO Lynn Harnish
Civil Engineer I
State Pipeline Coordinator's Off. FILE NO: F-66-077-81
1001 Noble, Suite 450
Fairbanks, AK 99701

DATE January 14, 1981

TELEPHONE NO:

FILE COPY

FROM: Mary E. Greene *me*
Assistant Attorney General
604 Barnette, Room 228
Fairbanks, AK 99701

SUBJECT: Extent of State Permitting
Authority on Haul Road
ROW (Supplement)

In doing research on federal access alternatives, I discovered a statute which may have some bearing on the question earlier posed. In Section 503 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1763, the Congress declared:

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State of Alaska
Office of
Pipeline Coordinator

In order to minimize adverse environmental impacts and the proliferation of separate rights-of-way, the utilization of rights-of-way in common shall be required to the extent practical, and each right-of-way or permit shall reserve to the Secretary concerned the right to grant additional rights-of-way or permits for compatible uses on or adjacent to rights-of-way granted pursuant to this Act. In designating right-of-way corridors and in determining whether to require that right-of-way be confined to them, the Secretary concerned shall take into consideration national and State land use policies, environmental quality, economic efficiency, national security, safety, and good engineering and technological practices. The Secretary concerned shall issue regulations containing the criteria and procedures he will use in designating such corridors. Any existing transportation and utility corridors may be designated as transportation and utility corridors pursuant to this subsection without further review.

- PC _____
- LOPC *me* _____
- AO _____
- SO _____
- WAC _____
- CS _____
- LB _____
- W&G _____
- F&G/A _____
- DEC _____
- DNR _____
- DOT/PF _____
- AGO _____
- OTHER _____

You will note that FLPMA was enacted two years after the Haul Road ROW was granted, and that the Haul Road ROW does not contain the express reservation referred to in 43 U.S.C. § 1763. Nevertheless, the phrase "subject to in applicable laws and regulations of the United States, now or hereafter in effect" could be interpreted to include this provision.

MEG:bsb

cc: Charles Behlke

Al Ott ✓